

**Senate Bill 82**  
**Medicaid Third Party Liability**  
**Hearing before the House Human Services Committee**  
**March 4, 2009**  
**Jeff Buska, Administrator, Quality Assurance Division, DPHHS**

Good afternoon Madam Chair Becker and members of the committee, for the record my name is Jeff Buska, I am the Administrator of the Quality Assurance Division (QAD) of Department of Public Health and Human Services (DPHHS). I am here today to present testimony in support of Senate Bill 82.

DPHHS operates the Medicaid program; one of the requirements of operating a Medicaid program is that the State must coordinate with other liable third parties to ensure Medicaid is the payer of last resort. The function of coordinating with other liable third parties is known as Third Party Liability (TPL). Third Party Liability is operated by the Quality Assurance Division, during state fiscal year 2008 the TPL unit accounted for almost \$127 million dollars in savings by coordinating with and collecting funds from other liable third parties.

The purpose of Senate Bill 82 is to modify and clarify state laws pertaining to the Medicaid Third Party Liability (TPL) program. Specifically, this bill makes the following changes:

1. Modify MCA 53-2-612 to add language indicating Medicaid can only collect from the portion of a clients' judgment or settlement that is related to medical expenses. The U.S. Supreme Court ruled in *Arkansas v Ahlborn* that Medicaid agencies can only collect Medicaid expenses from the medical portion of any judgments or settlements. DPHHS has made operational changes to incorporate this requirement, and the Montana Code Annotated now needs to be changed to reflect this requirement.
2. Implement changes related to the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which, exclude, from estate recovery, medical assistance paid on behalf of Medicaid recipients under Medicare Savings Plans. This includes Medicare premium payments and payments for coinsurance and deductibles on Medicare crossover claims covered under the Medicaid program.

3. Add Financial Institutions to the list of entities required to cooperate with Medicaid in the settlement of estate cases. Medicaid recipients are allowed to retain personal funds up to a limited amount (\$2,000). State and Federal laws require that those personal funds be paid to the State Medicaid Agency (DPHHS) upon the death of the recipient. Typically these personal funds are administered by the nursing facility; however, some personal funds are maintained by guardians or family members using private bank accounts. Currently, Financial Institutions with those private bank accounts are not required to remit those funds upon death of the Medicaid recipient. This has caused problems with compliance regarding the federal law when funds are not returned. Sometimes these funds become unclaimed funds and are not remitted to DPHHS. This change does not require financial institutions to track which of their clients are enrolled in Medicaid. It is the responsibility of DPHHS to identify Medicaid clients who have died and are subject to recovery under this statute. DPHHS will communicate directly with the financial institution to recover the monies.

4. Modify MCA 53-6-167 to clarify that the department is not required to initiate probate in order to collect under this section. DPHHS was involved in a recent legal action related to this topic and prevailed. This change codifies the courts' decision.

5. Eliminate the reference to county in MCA 53-2-612. The county references pertain to medical programs under general assistance programs and medical programs for state assumed counties. The MCA was set up several years ago for Medicaid benefit recoveries and benefit recoveries for these county medical programs. Since county general assistance programs and medical programs under state assumed counties no longer exist the county references in the code are no longer needed.

6. Modify the hardship provisions in MCA 53-6-178 to eliminate inconsistencies with other sections of the MCA 53-6-171. Make both sections of the law consistent for administration, eliminate confusion.

As Senator Steinbeisser stated this bill strengthens the financial integrity of the Medicaid program by making sure that Medicaid is the payer of last resort. This bill coupled with other existing laws balances the financial obligations of the Medicaid program, with the rights and protections of individuals served by the Medicaid program. While, SB 82 does not address exemptions to estate recovery, it is important for this

committee to know that the Department is prohibited from recovering from estates if there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. Additionally, the MCA outlines hardship provisions that may be applied. Finally, there are exemptions for certain assets of Native Americans.

In summary this bill will contribute to the sustainability of the Medicaid program and more importantly continued services for needy Montanans. The bill memorializes recent state and federal court decisions, modifies Montana code to implement changes in federal requirements, and modifies laws to improve the efficiency and effectiveness of DPHHS administration of the Medicaid program.

Thank you for your time and attention, I am available to answer your questions regarding this bill.